

ANTIGUA AND BARBUDA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

CLAIM NO ANUHCV2015/0562

BETWEEN:

THE SUPERINTENDENT OF INSURANCE

Applicant/Claimant

AND

ANTIGUA INSURANCE COMPANY LIMITED

Respondent/Defendant

Appearances:

Mrs. Eleanor R. Solomon for the Applicant/Claimant

Mr. Sheffield Bowen for the Respondent/Defendant

.....
2016: January 12; 29
July 13
.....

DECISION

INTRODUCTION

[1] Lanns, J. [Ag]: On the 25th June 2015, the Superintendent of Insurance, Mrs. Claudette Richardson (the Superintendent) filed a Fixed Date Claim accompanied by supporting affidavit (with 17 documents exhibited thereto) seeking the following orders;

- (1) That all of the business of the Defendant Company be placed under Judicial Management pursuant to section 62 of the Insurance Act 2007 No 13 of 2007 (the Act)
- (2) That Dalmer W.A. McCoy be appointed Judicial Manager pursuant to section 62 (2) of the Act.

- (3) That, pursuant to section 62 (6) of the Act, the Court impose directions regarding the powers and duties of the Judicial Manager as may be necessary.
- (4) That the costs of these proceedings be paid as an expense of the Judicial Manager.
- (5) Such further or other order as the court thinks fit.

[2] Concurrent with the filing of the Fixed Date Claim, and supporting affidavit, the Superintendent filed an application seeking the same orders as set out in the Fixed Date Claim.

[3] The grounds of the application are stated to be:

- (1) The applicant did on the 24th September 2012 intervene in the Defendant Company pursuant to section 56 of the Act.
- (2) The applicant/claimant is of the opinion that it is necessary and proper to apply for an order that the Defendant company be placed under judicial management;
- (3) The defendant company carries on general insurance business and is deemed insolvent in accordance with section 53 (1)(c) of the Act in as much as its total liabilities exceed its total assets.
- (4) The defendant company has failed to meet statutory requirements, and continue to remain non compliant;
- (5) Judicial management is essential in order to protect policy holders of the defendant company against the risk of the defendant company's inability to meet its liabilities and to fulfill the reasonable expectations of policy holders.

[4] Mr. Dalmer W.A. McCoy, (the intended Judicial Manager), who is represented as an insurance and management services provider, and mediator and arbitrator in dispute resolution, filed an affidavit of consent, with one document exhibited thereto.

[5] On the 28th October 2015, Mr Khouly filed an affidavit in opposition to the Fixed Date Claim, the Application, and the supporting Affidavit of the Superintendent. The affidavit in opposition is a blend of an affidavit, legal opinions and inferences. Inferences and legal opinions are not permitted in affidavits. The Superintendent replied.

[6] The matter came before me in open court for determination. The Superintendent and Mr. Khouly were cross examined on their respective affidavits.

[7] At the end of the hearing, the court ordered the parties to file written submissions and authorities by the 29th January 2016. But it appears that only the Superintendent complied. I have not received any submissions by or on behalf of the Defendant Company

BRIEF BACKGROUND FACTS

[8] Antigua Insurance Company Limited (ANICOL) was incorporated on the 15th October 1997 under the Company's Act, 1995 (the Act). It was authorized:-

(1) to carry out all classes of general insurance business;

(2) to own property of all descriptions; and

(3) to give mortgages locally and regionally. ANICOL is said to be a family owned company. All of its shareholders are also directors, but its main shareholder and director is Mr. Salem Khouly (Mr Khouly) who manages ANICOL and carries out the function of Compliance Officer.

[9] On the 24th September 2012, and 24th October 2012, the Superintendent issued Instruments in Writing to ANICOL pursuant to section 58 of the Insurance Act No 13 of 2007 (the Act). By those instruments, ANICOL was instructed:-

i. to refrain from effecting or writing any new policies and

ii. to refrain from varying existing policies.

iii. to take action necessary to protect policy holders and other creditors against the risk that the company is unable to meet its liabilities. To this end, ANICOL was required to :

(a) Furnish ongoing monthly reporting to the Superintendent in the specified format;

(b) Inject immediately additional capital of at least \$1,000,000.00 with the additional amount of \$400,000.00 by December 31, 2012, and a further \$400,000.00 by December 31, 2013.. Alternatively, ANICOL was given the option to inject assets immediately in the form of unencumbered property. If this option was chosen, then ANICOL was required to inject liquid assets to establish the insurance fund.

- (c) Provide the Superintendent with the latest evaluation of the property
- (d) Maintain adequate insurance coverage and keep the Superintendent up to date with changes to the reinsurance program.
- (e) Restrict or suspend dividends or payments to other shareholders
- (f) Restrict transfer or purchase of its own shares
- (g) Develop a culture of strong corporate governance, risk management and internal controls
- (h) Refrain from renewing existing policies.

[10] The Instruments concluded with a warning to ANICOL that failure to comply with those directions, may result in the Superintendent taking further action in accordance with the Act.

[11] It appears that ANICOL has complied with some of the directions/requirements, but remained non compliant with respect to others. Having been given extensions of time within which to become fully compliant, ANICOL attempted to put measures in place which would aid it in becoming fully compliant, but these measures were against the governing law and were not approved. Other prospective deals which could have aided ANICOL fell through.

[12] In August 2013, the Financial Services Commission (FSC) conducted an onsite examination of ANICOL and reported its findings to the Board of Directors. Those findings were as follows:

- (i) The total liabilities as at April 30th was \$1.95 M.;
- (ii) Payables stood at \$574,234.00 with \$552,258 or 96 % being outstanding for over one year;
- (iii) Receivables were 52% outstanding for a year and credit risks were assessed high;
- (iv) Liquidity and solvency were determined to be high as 86.45% of ANICOL'S' assets were fixed with liquid assets accounting for 12% of the total asset base.

ISSUES

1. Is ANICOL insolvent
2. Has ANICOL obeyed the requirements of the Act
3. Should ANICOL be placed under judicial management.

Is ANICOL Insolvent?

[13] Section 53 of the Insurance Act provides:

"53. Solvency"

(1) A company shall be deemed to be insolvent

(a) in the case of a company carrying on only long-term insurance business, if the value of its liabilities exceeds its assets;

(b) in the case of a company carrying on only general insurance business, if the excess of assets over liabilities is less than the greater of the following amounts, namely

(i) five hundred thousand dollars; or

(ii) twenty per centum of its premium income in respect of its general insurance business in its last preceding financial year; and

(c) in the case of a company carrying on both long-term insurance business and general insurance business, if the excess of its total assets over its total liabilities is less than the amount specified in paragraph (b).

(2) For the purpose of subsection (1)

(a) in computing the amount of the liabilities of a company, all contingent and prospective liabilities of the company in respect of policies including adequate provision for unexpired policies and outstanding claims, but not liabilities in respect of share capital, shall be taken into account;

(b) the premium income of a company in any financial year shall be assessed as the net amount, after deduction of any premiums paid by the company for re-insurance in that year in respect of all general insurance business carried on by it; and

(c) assets have been valued in accordance with any rules prescribed for the valuation of assets and only admissible assets shall be included in determining the solvency of a company.

[14] As can be seen, section 53 (1) (a) is inapplicable as ANICOL does not carry on long term insurance business. It carries on general insurance business.

POSITIONS OF THE PARTIES

[15] Mr. Khouly in his affidavit in opposition states that he has satisfied the solvency test. In attempting to substantiate and develop that statement, Mr Khouly asserts that ANICOL submitted audited financial statements for the year ended January 2014, which indicated that total assets as of January 31, 2014 stood at \$3,793.129, and total liabilities for the same date stood at \$1,809,060.00

yielding total assets over total liabilities of \$1,984,069.00, thereby satisfying the test of solvency under section 53 (1) (b) (i) of the Act. He further stated that premium revenue for the year ended stood at \$1,117,610.00 and 25 % thereof is \$279,402.50. He said that since ANICOL had a net position of \$1,984,069 of total assets over liabilities, which is substantially greater than \$279,402.50, ANICOL has met and surpassed the solvency test under section 53 (1) (b) (ii). Accordingly, says Mr. Khouly, there is no issue with respect to solvency pursuant to the Act. No document was tendered to support the figures given by Mr. Khouly. At paragraph 29 of his affidavit in opposition, Mr Khouly stated that "any issues raised by the Superintendent with respect to insolvency are arbitrary, wanton, highhanded and capricious". He seemed to have resiled from that position when confronted with the various email exchanges and other correspondence between the parties, showing otherwise. Asked by Mrs. Solomon if that statement at paragraph 29 was true, Mr Khouly candidly replied "It is not true."

[16] The Superintendent countered that the insolvent position relates to the period of examination and not in 2014. However, the draft audited statement for January 2015 showed that ANICOL's capital was impaired. It was accepted that ANICOL had met the solvency requirement, but its equity position remained below minimum paid-up share capital requirement of \$2.0M as required by Section 12 of the Act. As at January 31, 2015, the equity position was \$1.955 M down from \$1.984M at January 31, 2014.

[17] It emerged during cross examination that beginning 2012 up until the 24th June 2015, no policy holder complained that ANICOL reneged on any claim on their policies of insurance. Asked whether any shareholder of the company was derelict in meeting his or her obligation to the shareholders, the Superintendent answered 'No; but the shareholders are all family.' Asked further whether any member of the public complained that ANICOL had not paid them what was due to them, the Superintendent answered 'No.' However, during cross examination Mr Khouly accepted that there were claims made since the intervention. It is unclear whether those claim have been paid.

FINDING ON ISSUE NO 1

[18] There is no evidence before me of any unpaid claims of policy holders. There is also no evidence before me of any unpaid claims of the general public. And there is no evidence before me that any shareholder was derelict in meeting his or her obligation to the shareholders. Based on the evidence before me, however, I find:

(a) that at the time of examination in 2013, ANICOL was insolvent within the meaning of Section 53 (1) (b) (i);

(b) that for the year ended January 2014, ANICOL was solvent within the meaning of Section 53 (1) (a) (i) and Section 53 (1) (b) (ii) of the Act.

Accordingly I agree with counsel for the Respondent that there is no issue with respect to insolvency at present. Indeed, the Superintendent at paragraph 12 of her Reply to Mr Khouly's affidavit in opposition, seems to have conceded the point, while at the same time raised concerns about ANICOL's liquidity challenges. Notably, the Superintendent stated that the Notice of Intervention expires after one year. Does it mean that the solvency of ANICOL as at January 2014 is to be disregarded. Unless, I have misinterpreted the relevant time periods, I find that the allegation of insolvency for the period of examination in 2013 is meritorious, but there is no issue as to the solvency of ANICOL for the period ending 2014, and accordingly that ground of application fails in so far as it relates to the period ending January 2014.

ISSUE NO. 2. HAS ANICOL FAILED TO MEET STATUTORY REQUIREMENTS AND CONTINUE TO REMAIN NON- COMPLIANT

(i) Insurance Fund

[19] Section 29 of the Insurance Act mandates the establishment of an insurance fund. It sets out how the fund should be established and operated, and it sets out how, and in what securities the insurer's assets may be invested. As noted by Sir Gerald A. Watt QC in his Legal Opinion to the Superintendent of Insurance, dated the 15th July 2013, the rationale for the provisions of Section 29 is for the establishment of an insurance fund in respect of each class of insurance being transacted equal to its liability and contingency reserves. This is intended to ensure that the company has funds to meet its obligations with regard to claims made by its policy holders.

[20] By Section 29 (1) :-

"every company shall, in respect of each class of insurance business transacted, establish an insurance fund equal to its liability and contingency in respect of policies in Antigua and Barbuda in that class of business as established by the revenue account of the company, less the amounts held on deposit with the Commission."

[21] Subsection (2) mandates that:

" Within four months of the end of each financial year a company shall place in trust the assets of its long-term insurance fund and of its motor vehicle insurance fund, as the case may be.

[22] By Subsection (3) "The assets of an insurance fund shall be invested only in the securities specified in the Fourth Schedule;

[23] And by Subsection (4):-

"The Minister may on the recommendation of the Board by Order published in the Gazette amend the Fourth Schedule."

[24] There is no dispute, and Mr Khouly has admitted during cross examination that as of the 22nd January 2015, no insurance fund has been established. The inescapable and reasonable inference is that ANICOL is facing financial difficulty. Indeed, the Superintendent deposes that as of 30th April 2015, the monthly statements showed a liquidity ratio of 14.12 % and has been trending downwards since January 2014. This ratio has been moving away from 95% prudential minimum and consequently ANICOL remains unable to meet the Insurance Fund requirement which stood at \$695,000.00 at April 30, 2015. At the same time, the equity position stood at \$1.96 million compared to \$1.98 at January 31, 2014. On the 30th October 2013, the Superintendent wrote to ANICOL requiring it to inject capital to fully establish the Insurance Fund and to meet its liquidity needs by capital injection in order to turn around its declining position.

[25] Mr. Khouly sought in his affidavit in opposition to lay the blame squarely at the feet the Superintendent for ANICOL'S failure to establish the insurance fund. He castigated the Superintendent for refusing to accept the Letter of Credit from First Caribbean International Bank, even though Section 29 of the Act does not permit the use of a Letter of Credit for the establishment and investment of Insurance funds. He seemed to be suggesting that the main reason for ANICOL'S state of affairs is because ANICOL was prohibited from issuing policies even though it had injected over \$2 million in the Company after the expiration of the Compliance Notice.

[26] Based on the evidence, I find as a fact that ANICOL has failed to meet the requirements of Section 29 of the Act which mandates that each insurance company establish an insurance fund. The insurance fund has not been established, and there is nothing before the court to indicate when this fund will be established. In the result, ground No 4 of the Application in respect of the failure to establish an insurance fund is made out, and is therefore upheld.

(ii) Annual accounts and financial statements

- [27] The affidavit of the Superintendent complains that ANICOL was found to be in breach of Sections 38 and 54 of the Act. Section 38 requires licensed insurers submit financial statements within four months after the financial year-end. ANICOL failed to meet this statutory requirement. As to Section 54, ANICOL failed to submit additional information requested by the Superintendent of Insurance. ANICOL has not denied that this statutory requirement has not been met. This ground is therefore upheld.

(iii) Audit Committee

- [28] Section 197 (2) of the Act provides:

"The directors of a registered local company shall establish an audit committee consisting of at least three directors to perform those duties that may be prescribed."

In her supporting affidavit, the Superintendent stated that ANICOL breached Section 197 (2) of the Act by its failure to establish an Audit Committee. At the date of hearing, the Audit Committee had not been established.

FINDING ON ISSUE NO. 2

- [29] I find, based on the evidence before me that ANICOL has breached the requirements of Sections 38, 54 and 197, and remains non-compliant in respect of those provisions.

PRIMARY CONCERN OF THE SUPERINTENDENT

- [30] Notwithstanding the breach of Sections 38, 54 and 197 (2) of the Act, it is apparent that the primary concern of the Superintendent is the absence or lack of an Insurance Fund in order to protect the interests of the policy holders, or potential policy holders, shareholders and staff of ANICOL. Indeed, during cross examination, the Superintendent was asked:-

'Would you say the biggest part of this matter is insolvency?' The Superintendent answered "No; the biggest part of it is the lack of an insurance fund and the concern that because of the accumulation in losses of the company, that the capital may be impaired. This position was further confirmed in re-examination when the Superintendent stated that the need for Judicial Management is as a result of non-compliance as it relates to the Insurance Fund.

It was further disclosed in reexamination that the Superintendent does not know the current financial position of ANICOL because the last audited statement received was in relation to the end of January 2014.

SHOULD ANICOL BE PLACED UNDER JUDICIAL MANAGEMENT?

[31] Sections 61 to 68 of the Insurance Act governs the appointment of a Judicial Manager.

"61. Application for judicial management

(1) The Superintendent may apply to the court for an order that a company or any part of the business of a company be placed under judicial management where, after exercising the power of intervention under section 56 (1), the Superintendent is of the opinion that it is necessary or proper to apply for an order.

(2) A company may after giving the Superintendent one month's notice in writing of its intention so to do, apply to the court for an order that it or any part of its business be placed under judicial management.

(3) The company and the Superintendent are both entitled to be heard on any application made to the court for an order under this section.

(4) Where an application is made under this section for an order in respect of a company, all actions and the execution of all writs, summonses and other processes against the company shall, by virtue of this section, be stayed and shall not be proceeded with, without the prior leave of the court unless the court directs otherwise."

[32] The Superintendent did intervene, and has, following the intervention taken the decision to apply to the court for an order that ANICOL be placed under judicial management, having been satisfied that it was necessary or proper to apply for an order.

[33] The financial report of 2015 which was approved by the Board of Directors of ANICOL states that:

"The company has suffered recurring losses from operations and has an accumulated deficit of \$1,932.256 (2013: \$1.843,485) that raises substantial doubt about its ability to continue as a going concern. ... We are unable to satisfy ourselves of the ability of the company to continue as a going concern in the foreseeable future."

As I understand this aspect of the report, ANICOL will likely be unable to pay its debts or liabilities in the foreseeable future. I accept the report as authentic. I accept that the reasons for the

intervention were critical, remains critical and continue to exist. Significantly, the non-establishment of the Insurance Fund is critical in light of the rationale for its maintenance. In so far as the record and the evidence shows, ANICOL does not have any outstanding claims, but the Insurance fund is not just concerned with existing claims or policy holders but is also for potential policy holders and potential claims.

[34] When an Insurance Company obtains a licence to engage in the business of insurance in Antigua and Barbuda, it submits to the code of conduct and discipline that is laid down in the Insurance Act. While it can protest the actions of the Superintendent of Insurance, it is nonetheless bound by those actions, so far as its license is concerned. It is obliged to obey all the provisions of the Act, including those provisions which impose upon the Superintendent to request financial information, to insist on full compliance with the Act. In default of compliance by the insurance company, the Superintendent is entitled to apply for the Insurance Company to be placed under Judicial Management. ANICOL, was given several opportunities to fully comply; it was afforded opinions and guidance. The record indicates that Mr Khouly expressed his gratitude for the patience of the Superintendent and other authorities. So I fail to see where the show of bad faith is, as insinuated by Mr Khouly and his counsel in paragraph 44 of the Affidavit in Opposition.

[35] ANICOL has been restricted from not writing further policies. Initially, it took no issue with this restriction; And it never complained of any failure to serve a section 57 notice. Clearly, it has resiled from that position; and has, by way of Mr Khouly's affidavit signified for the first time that ANICOL was not served with a section 57 notice. The affidavit in opposition to the making of a Judicial Management Order gave various reasons why ANICOL should not be placed under Judicial Management. In summary, these reasons are:

- (1) Lack of formal notice;
- (2) There is no need for the appointment of a Judicial Manager;
- (3) After the injection of \$2 million, the restriction should have been discharged;
- (4) There are no unpaid claims;
- (5) The fees charged by the Judicial manager are too high;
- (6) ANICOL wants to pick up the pieces and make good its defects;
- (7) the application for appointment of a judicial manager is premature

(8) There are less drastic measures which may be employed in building the Insurance Fund¹;

(9) The Superintendent failed to follow/apply the proper procedures in the exercise of her powers as conferred by the Act.

[36] I can see no reason to say that the Superintendent acted prematurely or that the application is not properly before the court by reason of the failure to serve notice of intention. It would seem that the correspondence to ANICOL dated 24th September 2012 served to notify ANICOL of its intention to intervene. Even if there was a failure to serve a section 57 notice, ANICOL has pointed to no or no substantial prejudice that ANICOL might have suffered as a result of this purported irregularity. It was open to ANICOL to file an application to strike out the Superintendent's application on the basis of the purported formal defect of lack of the section 57 notice. It has not done so. On the contrary, it has provided a fulsome response to the application. Furthermore, the authorities establish that "no insolvency proceedings shall be invalidated by any formal defect or any irregularity, unless the court before which objection is made considers that substantial injustice has been caused by the defect or irregularity and that injustice cannot be remedied by any order of the court." As I have said, ANICOL has made no application for a striking out order, and the court is not of the view that any injustice has been caused by the purported defect as suggested by ANICOL.

CONCLUSION

[37] Looking at the matter in the round, I conclude that the court should accede to the applications and grant the order sought by the Superintendent. I am grateful to Counsel for their assistance, but especially to learned counsel for the Superintendent (Mrs. Solomon) for her industry in respect of the submissions and authorities which have aided the court.

THE ORDER

[38] IT IS HEREBY ORDERED that

1. The Defendant Company ANTIGUA INSURANCE COMPANY LIMITED (ANICOL) be and it is hereby placed under judicial management.
2. Mr Dalmer W.A. McCoy of No. 5 Cassada Gardens, St John's, Antigua is hereby appointed as Judicial Manager of ANICOL

¹ These proposed options are set out in the affidavit in opposition at paragraph 61, and the Superintendent has adequately and forcefully explained in her reply (at paragraph 24) why these options are not viable, or cannot be considered; or where they have been tried and failed.

3. ANICOL shall forthwith vest exclusively in the control of the Judicial Manager and the Judicial Manager shall have complete control of the management of ANICOL pursuant to Section 62 (4) of the Insurance Act, No 13 of 2007.
4. The Judicial Manager shall conduct the management of ANICOL with the greatest economy compatible with efficiency.
5. The Judicial Manager shall provide an interim report to this Honourable Court on the operations of ANICOL within 14 days hereof; and further, he shall as soon as possible after his appointment and in any event within 60 days hereof, file with the court pursuant to Section 63 of the Act, a report stating which of the following courses is, in the circumstances, in his opinion most advantageous to the general interests of the policy holders of ANICOL:
 - (a) the transfer of the business of ANICOL to some other company in pursuance of a scheme to be prepared in accordance with the Act (wherever the policies of the business continue for the original sums insured, with the addition of bonuses that are attached to the policies, or for reduced amounts
 - (b) The carrying on of the business of ANICOL; (wherever the policies of the business continue for the original sums insured, with the addition of bonuses that are attached to the policies, or for reduced amounts);
 - (c) The winding up of ANICOL or any part of the business of ANICOL; or
 - d) the dealing with part of the business of ANICOL in one manner, and with another part in another manner;
6. The Judicial Manager shall, in accordance with Section 63 (2) of the Act furnish copies of the said Reports to the Superintendent of Insurance upon filing same with the Court.
7. For the purposes of preparing the above-stated Report, the Judicial Manager shall conduct an assessment of the operations of ANICOL to determine the following:
 - (a) The extent of ANICOL'S liabilities with particular reference to policy holders, annuities, and pension plan owners
 - (b) ANICOL'S liabilities to other parties:
 - (c) The identity, value and location of all ANICOL'S assets;
 - d) Whether there is a need to trace assets that belong or ought to belong to ANICOL and assets located in or outside of Antigua and Barbuda;

- (e) Whether it is possible for ANICOL or any other specific areas of ANICOL insurance business to continue as a going concern;
8. The Judicial Manager shall have authority as an officer of this Honourable court to act in Antigua and Barbuda or any foreign jurisdiction where he believes assets and property of ANICOL may be situated and shall have the right to bring any proceeding or action locally or in a foreign jurisdiction for the purpose of fulfilling his duties and obligations under this Order and the insurance Act, and to seek assistance of any court of a foreign jurisdiction in the carrying out of the provisions of this Order or any subsequent order in this proceedings, including without limitation, an order of examination of persons believed to be knowledgeable of the affairs, assets and property of the Company and to assist the Judicial Manager in the recovery of the assets and property of ANICOL
9. The Judicial Manager, his employees, legal Counsel, agents, and such other persons retained by him in the performance of his duties hereunder shall be granted indemnity from the assets of ANICOL for his fees, expenses and actions taken, including indemnity for any litigation or other claims, actions, demands whatsoever in respect of any debts, costs, claims, liabilities, acts, matters, or things done or to be done or omitted by the Judicial Manager, his employees, legal counsel, agents and such other persons retained by him except where there is a finding by the Court of gross negligence in the performance of him and or of their respective duties.
10. All actions, and the execution of all writs, summonses and other processes against ANICOL having been stayed upon the application herein for Judicial Management by virtue of section 61 (4) of the Act, the same shall not, be proceeded with, without the prior leave of the Court herein;
11. The Judicial Manager in discharging his obligations shall be empowered to perform all functions of management including but not limited to the following powers:
- (a) to ascertain the assets of ANICOL and their location and take all steps including Court actions where appropriate to obtain possession of such assets, including, without prejudice to the generality of the foregoing, reinsurance receivables, and to bring the same under his control and further, where appropriate bring the same into the jurisdiction of this

Honourable Court and, for the purpose, to seek the assistance of the courts of various jurisdictions in which the assets of ANICOL are located.

- (b) to incur and pay for all reasonable expenses and disbursements in connection with the running, administration and management of ANICOL'S records and affairs and offices;
- (c) if appropriate, in the discretion of the Judicial Manager, to retain, employ such further professionals, or individuals, partnerships, associations or companies, to assist in running the affairs and business of ANICOL, and for the purposes of ascertaining and quantifying the assets, records and liabilities of ANICOL, such employment being either in this jurisdiction or in any other jurisdiction of the world where ANICOL has conducted business or entered into contacts with third parties;
- (d) to render invoices for the remuneration at the usual and customary hourly rates more particularly stated in the Schedule attached hereto; (At pages 16 and 17).
- (e) to take all actions necessary to see, secure, take possession of any books, papers, writings, documents, and records relating to ANICOL that are located in the offices of its auditors or any other person both in this jurisdiction and in any other jurisdiction and to bring the same under his control, and further where appropriate, bring the same into the jurisdiction of this Honourable Court and, for this purpose to seek the assistance of the Courts of the various jurisdictions in which the assets of ANICOL are located;
- (f) to take all actions to see, review, secure, take possession of the claims and financial records and financial records of ANICOL that are located in the offices of ANICOL, or any company associated with ANICOL or any person, and to bring the same under his control and further, where appropriate, bring the same into the jurisdiction of this Honourable court and, for this purpose, to seek the assistance of the Courts of the various jurisdictions in which the assets of ANICOL are located;
- (g) to open, operate and maintain bank accounts in the name of the Judicial Manager as may be necessary;
- (h) to conduct such investigations and obtain such information as is necessary to locate, protect, secure, take possession of, collect

and get in the assets of ANICOL and determine liabilities or to enable the Judicial Management to proceed in a speedy and efficient manner;

- (i) to do all such things as may be necessary or expedient for the protection of ANICOL'S assets;
 - (j) to discharge rent, salaries of any employees of ANICOL and other current expenses of ANICOL;
 - (k) to grant or accept surrender a lease or a tenancy of any of the property of ANICOL;
 - (l) to terminate complete or perfect any contracts or transactions relating to the business of ANICOL
 - (m) to effect and maintain insurance in connection with the management and maintenance of the business, property and assets of ANICOL;
 - (n) to do all acts, and to execute in the name and on behalf of ANICOL all deeds, receipts or other documents;
 - (o) to do all such things reasonably and properly incidental to the management of ANICOL and to exercise of the foregoing powers;
12. Subject to the provisions of section 61(4) of the Act, the said Judicial Manager may bring or defend any action or other legal proceedings which relate to the said property belonging to ANICOL and which it is necessary to bring or defend for the purpose of effectually discharging his role as Judicial Manager;
13. The Judicial Manager, in carrying out his duties and responsibilities may apply for directions from this Honourable Court from time to time, including any application as may be required for the amendment of this Order;
14. The Judicial Manager shall perform such other duties and carry out such other directives as the Court may from time to time order;
15. The costs of this application are to be paid out of the assets of ANICOL in priority to all other liabilities; such costs to be assessed if not agreed.
16. There shall be liberty to either party to apply.

SCHEDULE

<u>Grade</u>	<u>Local staff rate in EC\$</u>
Judicial manager	\$250.00
Senior staff	\$100.00
Secretarial	\$ 60.00

Pearletta E. Lanns
High Court Judge [Ag]